

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

CASCADE CORPORATION, d/b/a
EASTERN SHORE NURSING AND
REHABILITATION CENTER AND
COURTHOUSE CONVALESCENT CENTER

Employer

and

UNITED SERVICE EMPLOYEES
UNION, LOCAL 518

Case 4–RC–20074

Petitioner

and

LOCAL 148, PRODUCTION
WORKERS UNION, AFL-CIO¹

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer was served with a Notice of Representation Hearing by first class mail on September 21, 2000, scheduling a hearing in this case for October 2. Thereafter, the hearing was rescheduled to October 5 at the Employer's request. The Employer did not appear

¹ The Intervenor's name appears as amended at the hearing.

at the hearing, but by letter to the Regional Office dated October 4, 2000, the Employer offered to stipulate, *inter alia*, to certain jurisdictional facts. Specifically, the Employer would stipulate that it is a New Jersey corporation and a wholly-owned subsidiary of Northwestern Human Services, Inc. and that during the past twelve months, it received gross revenues in excess of \$100,000 and purchased goods and materials in excess of \$50,000 directly from points outside the State of New Jersey.

The record shows that the Employer operates two nursing facilities in Cape May Courthouse, New Jersey, called Courthouse Convalescent Center and Eastern Shore Nursing and Rehabilitation Center (herein called the Facilities). The record also includes contracts between the Employer and two of its suppliers, The Wood Company d/b/a Wood Dining Services, Inc. (herein called Wood), which provides food services to the Facilities' residents, and Healthcare Services Group, Inc., (herein called Healthcare), which provides housekeeping and laundry services. These companies are both located in Pennsylvania, and the Employer's contracts require that the Employer annually pay these suppliers several hundred thousand dollars.

The Board's discretionary standard for assertion of jurisdiction over nursing homes requires that the employer receive at least \$100,000 in gross revenues. *East Oakland Community Health Alliance*, 218 NLRB 1270 (1975). As the Employer agrees that it meets the Board's discretionary standard and clearly falls within the Board's statutory jurisdiction, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. In its October 4, 2000 letter to the Regional Office, the Employer offered to stipulate that the Petitioner and the Intervenor are labor organizations within the meaning of the Act, and both unions stipulated to their labor organization status at the hearing. Accordingly, I find that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

4. The Employer and the Intervenor are currently party to a collective-bargaining agreement (herein called the Agreement) covering the unit sought by the petition. By its terms the Agreement was effective from January 15, 1997 through January 14, 2000, and it was automatically extended until January 14, 2001. The Petitioner filed the petition in this case on September 21, 2000, and no party contends that it is untimely.

A contract for a reasonable term not in excess of three years will bar a representation petition for the duration of the agreement, subject to an "open period" during which a representation petition may be filed. *Shen-Valley Meat Packers, Inc.* 261 NLRB 958, 959-960 (1982); *General Cable Corp.*, 139 NLRB 1123 (1962). In the health care industry, the open period runs from 90 through 120 days before the termination date of the agreement or the end of the third year, whichever is first. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). As the petition was timely filed between 90 and 120 days before the expiration of the three year agreement, as extended, I find that the Agreement does not bar the petition in this case and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The instant petition seeks an election in a unit of “all full time and regular part-time certified nurse aides.” At the hearing, the Petitioner and the Intervenor stipulated that the appropriate unit would encompass “all full-time and part-time service employees, including nurses aides and certified nurses aides, as well as all regular part-time employees employed by the Employer [at the Facilities]” and “all employees not specifically excluded.” The Petitioner and the Intervenor stipulated that all registered nurses, dieticians, dietary aides, professional employees, department heads, drivers, maintenance employees, office employees, LPNs, patient activity employees, agency employees, guards and supervisors as defined in the National Labor Relations Act were excluded from the unit. A representative of the Intervenor stated that there are about 82 employees in the included categories. In its October 4 letter, the Employer agreed to stipulate to a unit of all full time and regular part-time certified nurse aides and nurse aides employed by the Employer at the Courthouse Convalescent Center and Eastern Shore Convalescent Center, but excluding all dietary employees, housekeeping employees, laundry employees, nurses, professional employees, drivers, maintenance employees, office clerical employees, patient activity employees, guards and supervisors as defined in the Act. The Employer’s proposed unit, unlike that stipulated to by the Unions, specifically excludes housekeeping employees and laundry employees. The recognition clause of the Agreement covers “...all full-time service employees, including nurses aides and dietary aides, as well as all regular part-time employees (defined as those working less than 33 hours during a work week), employed by the Employer at its Nursing Home and all other employees not specifically excluded. Excluded from the...unit...are all registered nurses, dieticians, professional employees, department heads, drivers, maintenance employees, office employees, LPN’s [sic], patient activities employees, guards and supervisors as defined in the National Labor Relations Act.”

Inasmuch as the Agreement does not refer to housekeeping and laundry employees, the Unions did not mention them in their stipulation, the Employer specifically seeks their exclusion, and they are supplied by Healthcare Services,² I shall exclude housekeeping and laundry employees from the unit. In addition, while the Agreement includes dietary aides, neither the Unions nor the Employer seek their inclusion in the unit. Accordingly, I shall also exclude dietary aides from the unit.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service employees, including nurses aides and certified nurses aides employed by the Employer at Eastern Shore Convalescent Center and Courthouse Convalescent Center, Cape May Courthouse, New Jersey, excluding all registered nurses, dieticians, dietary aides, housekeeping employees, laundry employees, professional employees, department heads, drivers, maintenance employees, office employees, LPNs, patient activity employees, agency employees, guards and supervisors as defined in the Act.

² The record contains no evidence as to whether these employees are jointly employed by the Employer and Healthcare. See *MB Sturgis, Inc.* 331 NLRB No. 173 (2000).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,³ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**UNITED SERVICE EMPLOYEES UNION,
LOCAL 518 or by PRODUCTION WORKERS
UNION LOCAL 148, AFL-CIO or by NO UNION**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **January 12, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election

³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **January 19, 2001**.

Signed: January 5, 2001

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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